

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GARY NEEDHAM, O/B/O ALICE
NEEDHAM, DECEASED

Civ. No. 2:12-CV-01147-AC

Plaintiff,

FINDINGS AND
RECOMMENDATION

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ACOSTA, Magistrate Judge:

Introduction

Plaintiff Gary Needham, on behalf of Alice Needham, deceased (“Needham”), brings this action under 42 U.S.C. §§ 405(g) and 1383(c) for judicial review of the final decision of the Commissioner of Social Security (“Commissioner”) denying Needham’s claim for Social Security disability benefits. The Commissioner moved to dismiss Needham’s complaint for lack

of subject matter jurisdiction. Needham now seeks leave to amend the complaint to address its alleged jurisdictional deficiencies.

Standards

Federal Rule of Civil Procedure (“Rule”) 15 governs amendments to the pleadings and states, in relevant part, “[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b).” FED. R. CIV. P. 15(a)(1)(B). The Commissioner filed a motion to dismiss Needham’s claim for lack of subject matter jurisdiction on December 7, 2012. Needham filed this motion for leave to amend the complaint on December 26, 2012, nineteen days after the Commissioner’s motion to dismiss. Accordingly, the court should grant the motion to amend, as required by Rule 15(a)(1)(B), because it was filed within the twenty-one day period following the Commissioner’s motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

Conclusion

For the reasons stated above, Needham’s motion to amend the complaint (#14) should be granted. The Commissioner’s motion to dismiss (#9) should be denied as moot, with leave to file a subsequent motion to dismiss, should the Commissioner desire to do so, in response to Needham’s amended complaint.

Scheduling Order

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due April 23, 2013. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever is earlier, the Findings and Recommendation will go under advisement.

DATED this 9th day of April, 2013.

/s/ John V. Acosta

JOHN V. ACOSTA
United States Magistrate Judge